

Environmental Resources Management, inc.

855 Springdale Drive • Exton, Pennsylvania 19341 • (215) 524-3500 • Telex 4900009249

6 September 1988

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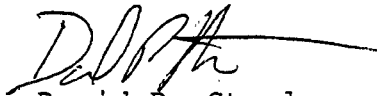
Mr. Bruce Conrad
Secretary
Carbon County Railroad Commission
P.O. Box 210
Court House Annex
Jim Thorpe, PA 18229-0210

Dear Bruce:

Enclosed find a fully executed copy of the Access Agreement for the Eastern Diversified Metals Site Remedial Investigation/Feasibility Study. In accordance with your request, Ron Landon (a Principal of Environmental Resources Management, Inc.), has signed the Agreement and initialled the changes which were made to the draft.

We are currently planning to begin work adjacent to your tracks in the week of 3 October, 1988. We will be contacting you in the next few weeks to obtain any information that you have regarding the placement of any utilities in the area of the drilling.

Sincerely,



David P. Steele
Remedial Investigation Manager

cc:Dianne Shawley, Esq.
Heather Winett, Esq.
Bruce Rapp
~~Suzanne Billings~~
Greg Contaldo
Marilyn Hewitt
Carl Pidge

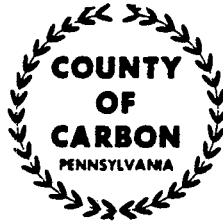
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Carbon County Railroad Commission

COMMISSIONERS

ALBERT U. KOCH, PRESIDENT
LUTHER A. GETZ, VICE-CHAIRMAN
DEAN D.W. DELONG
MORRIS MOLINERO
RICHARD FORGAY, TREASURER

BRUCE CONRAD, SECRETARY
GARFIELD & ZIEGLER, LEGAL COUNSEL



P.O. BOX 210
COURT HOUSE ANNEX
JIM THORPE, PENNSYLVANIA 18229-0210
Telephone (717) 325-3671

August 24, 1988

Mr. David P. Steele
Remedial Investigation Manager
Environmental Resource Management, Inc.
855 Springdale Drive
Exton, Pennsylvania 19341

RE: Eastern Diversified Metals Site
Access to Railroad Property

Dear Mr. Steele:

Enclosed please find two executed copies of the Access Agreement you requested for the above-referenced project.

Please return one fully executed copy to me, initialling the changes I made to your draft.

Sincerely,

Bruce Conrad
Secretary

BC/elg
Encs.

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Panther Valley Railroad

Environmental Resources Management, inc.

855 Springdale Drive • Exton, Pennsylvania 19341 • (215) 524-3500 • Telex 4900009249

27 July 1988

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Mr. Bruce Conrad, Secretary
Carbon County Railroad Commission
P.O. Box 210, Courthouse Annex
Jim Thorpe, PA 18229-0210

Alfred P. Luedthe, President
Panther Valley Railroad
P.O. Box 125
Jim Thorpe, PA 18229-0125

Re: Eastern Diversified Metals Site; Access to Railroad Property

Gentlemen:

As Tom Bartman of Morgan, Lewis & Bockius discussed briefly with Bruce Conrad on behalf of the Railroad Commission and with Mike McLean of Panther Valley Railroad by telephone on 13 July 1988, the United States Environmental Protection Agency, with the concurrence of the Pennsylvania Department of Environmental Resources, has entered into an Administrative Order by Consent (Consent Order) with AT&T Nassau Metals Corp. and Theodore Sall, Inc. to perform a Remedial Investigation/Feasibility Study (RI/FS) of the Eastern Diversified Metals site (EDM site) near Hometown, Schuylkill County, Pennsylvania. Carbon County owns, and Panther Valley Railroad (Railroad) operates, a line and a currently inactive siding from the line adjacent to and north of the EDM site.

The work required for the remedial investigation by USEPA includes installation of three ground water monitoring wells on the County property. These would be installed inside of a "Y" formed by the junction of the active railroad line and the unused railroad siding leading to the Gordon Bernard Property east of the EDM site. (See attached copy of site topography map). The wells will consist of boreholes drilled to varying depths (approximately 75, 25 and 10 feet deep), each with a length of steel well casing cemented into the hole to a partial extent of its depth. The well casing would extend above the ground surface approximately three feet and have a locking cap.

Drilling and installation of the wells would require initial access over the rail line for motorized drilling equipment, and would take two to three days. ERM would reenter this location after installation three to four times for a few hours each time to begin monitoring. Thereafter, ERM would require access over the rail line annually or possibly quarterly, using a small truck to sample the wells.

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ERM's staff geologist has informally discussed access to the location in question with Betsy Ahner of the Railroad and concluded

Mr. Bruce Conrad, Secretary
Carbon County Railroad Commission
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that no element of the work plan, including installation of the three monitoring wells, initial short-term access to this location, and subsequent infrequent, short-term access for sampling, will in any way hinder the Railroad's operations on its active line or on the inactive siding. Further, ERM commits to minimize generation of noise and dust and to make best efforts to contain all waters and mud resulting from the installation and development of the three wells. Subsequent sampling would not disturb the wells or the surrounding property. The wells would be installed and maintained so as to be unobtrusive.

I have enclosed a proposed draft access agreement for your consideration (along with a copy of the Consent Decree mandating the RI/FS, and a map identifying the location of the well installation). I request approval of the Agreement by the County, as owner of the property in question. Either I or Tom Bartman will call Mr. Conrad next week to determine an opportune time to discuss the agreement and any questions either of you might have in connection with the remedial investigation.

Thank you for your attention.

Sincerely,



David P. Steele
Remedial Investigation Manager



Joseph J. Hochreiter
Coordinating Project Manager

DPS/trb
Attachments
Enclosures

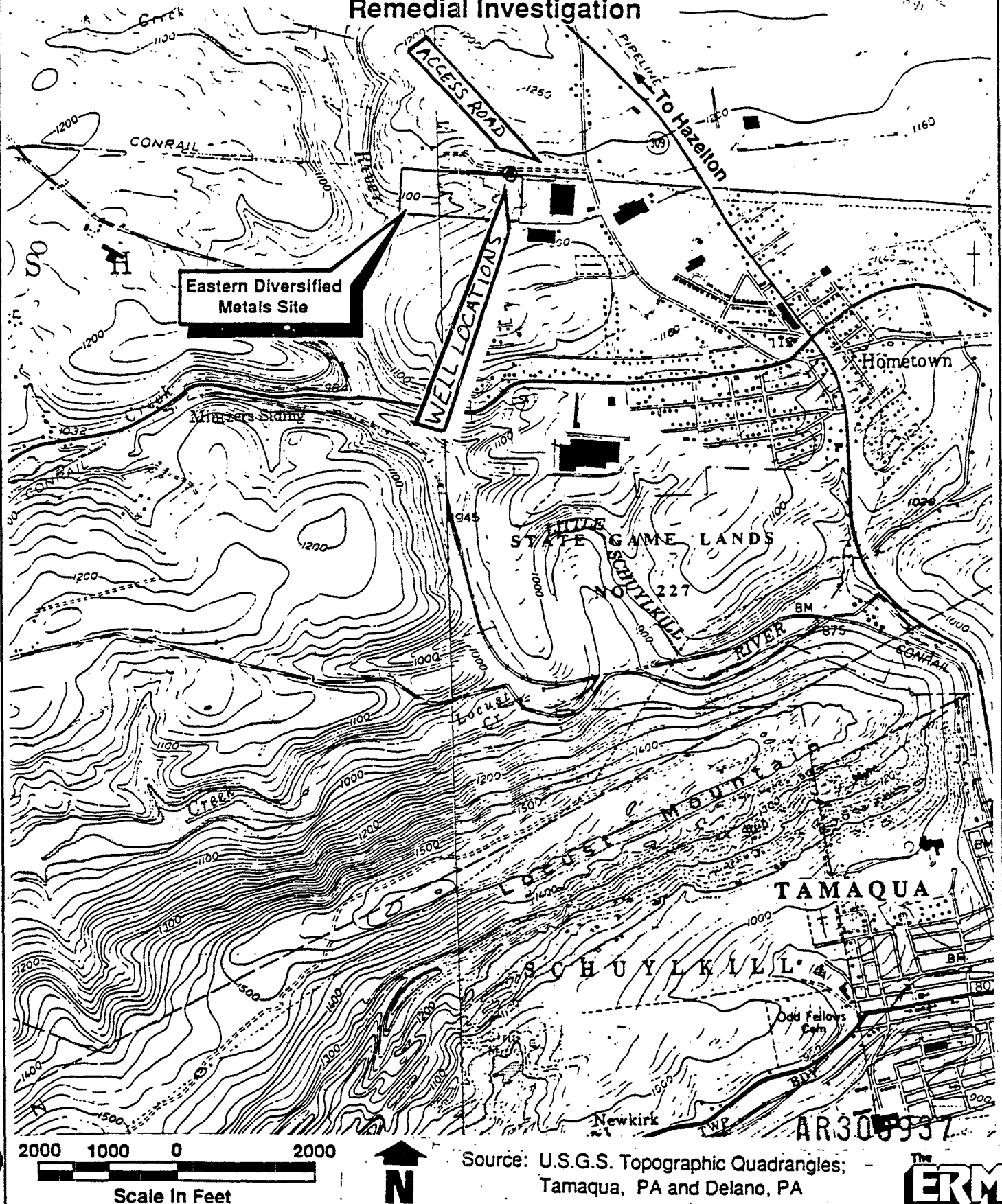
cc: M. Steinberg
H. Winnett
R. Beldner
W. Powers
B. Rapp

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received
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The
ERM
Group

Eastern Diversified Metals Remedial Investigation



Source: U.S.G.S. Topographic Quadrangles;
Tamaqua, PA and Delano, PA

The
ERM
Group

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**AGREEMENT FOR ACCESS TO
RAILROAD RIGHT-OF-WAY, HOMETOWN, PA**

AGREEMENT, dated _____, 1988 by and between Environmental Resources Management, Incorporated (ERM) and the County of Carbon (County).

WHEREAS the County owns a right-of-way, including an active railroad line with connected inactive railroad siding, located near Hometown, Pennsylvania and generally described and located on the map annexed hereto as Attachment A (the "Right-Of-Way"); and

WHEREAS AT&T Nassau Metals Corporation and Theodore Sall Incorporated (collectively, the "Companies") have entered into an Administrative Order By Consent ("Consent Order") dated October 23, 1987 with the United States Environmental Protection Agency ("EPA") regarding the Eastern Diversified Metals Site ("EDM site") in Hometown, Pennsylvania (copy annexed hereto as Attachment B); and

WHEREAS by the Consent Order the Companies have agreed to conduct a Remedial Investigation/Feasibility Study ("RI/FS") at the EDM site which will include sampling and monitoring of ground water on the Right-of-Way adjacent to the EDM site; and the Companies have engaged ERM to conduct the RI/FS; and

WHEREAS the County desires to cooperate fully with the Companies, with ERM, and with the EPA and the Pennsylvania Department of Environmental Resources ("PA DER") regarding access to the Right-Of-Way and ground water sampling and monitoring activities.

NOW, THEREFORE, the parties hereto agree as follows:

1. That the County shall permit ERM, its employees, representatives, agents, contractors, and subcontractors, and

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those of the EPA and PA DER, without incurring any liability to the County and at no charge in connection with the performance of the Consent Order, freely to enter the Property at all times for activities consistent with the Consent Decree including, but not limited to, installing three ground water monitoring wells at the location shown in Attachment A, and crossing the rail line for installation of the aforementioned monitoring wells and for access to the wells for sampling. Access at all times shall be governed by the Panther Valley Railroad Dispatcher, who alone will be responsible for providing daily clearance of track to all persons.

2. ERM shall contact public utility companies to obtain necessary information and clearance regarding the location of public utilities. The Carbon County Railroad Commission understands that it shall be responsible for providing clearance at each proposed drilling or excavation site on their premises and specifically with respect to any privately owned underground utilities, improvements or structures. ERM shall take reasonable precautions to minimize damage to the site due to its operations and will restore the site to the conditions existing prior to ERM's operations. ~~ERM shall not be liable for damage or injury from damage to subterranean structures (pipes, tanks, cables, or other utilities, etc.) which are not called to ERM's attention in writing and correctly shown on railroad furnished diagram(s).~~

3. That ERM will use its best efforts to see that any crossing of the rail line and well installation and sampling by its employees, representatives, agents, contractors, and subcontractors on the Right-Of-Way pursuant to the Consent Order and this Agreement are conducted in a reasonable and prudent manner consistent with the requirements of the Consent Order, and that generation of noise, dust, water, and mud, if any, is minimized.

4. This Agreement shall terminate upon termination by EPA of the Consent Order or upon mutual agreement of the parties.

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termination date may be extended by mutual written agreement of the parties.

5. This Agreement shall be binding upon, and insure to the benefit of, each party hereto and its respective heirs, successors, and assigns and may only be modified by written agreement.
6. This Agreement represents the entire understanding of the parties with respect to access at the site and supersedes any and all prior agreements and understandings regarding the subject matter hereof.
7. This Agreement may be excavated in multiple counterparts, each of which shall be deemed, but all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have signed and sealed this Agreement on the date and year first written above.

COUNTY OF CARBON, PENNSYLVANIA

BY: Albert A Koch

PANTHER VALLEY RAILROAD CORPORATION

BY: Elizabeth Alder, General Manager

ENVIRONMENTAL RESOURCES MANAGEMENT, INC.

BY: R. M. Clark

9-1-88

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION III

IN THE MATTER OF:

EASTERN DIVERSIFIED METALS SITE

AT&T Nassau Metals Corporation
Theodore Sall, Inc.

RESPONDENTS

Proceeding Under Section 106(a) of the
Comprehensive Environmental Response,
Compensation and Liability Act of
1980, (42 U.S.C. §9606(a)), as amended
by the Superfund Amendments and Re-
authorization Act of 1986, Pub. L. No.
99-499, 100 Stat. 1613 (1986)

Docket No. III-88-02-DC

ADMINISTRATIVE ORDER BY CONSENT

The parties to this Administrative Order by Consent ("Consent Order"), Respondents and EPA, without admission or adjudication of any issue of fact or law herein, and having agreed to the entry of this Consent Order, it is therefore Ordered that:

I. JURISDICTION

This Consent Order is issued pursuant to the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §9606(a), as amended by the Superfund Amendments and Reauthorization Act of 1986, ("SARA") Pub. L. No. 99-499, 100 Stat. 1613 (1986), and delegated to the Regional Administrators by EPA Delegation Nos. 14-14-A and 14-14-C.

The parties agree to undertake all actions required by the terms and conditions of the Consent Order, for implementation of a Remedial Investigation/Feasibility Study ("RI/FS").

The Respondents consent to EPA jurisdiction regarding this Consent Order.

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II. STATEMENT OF PURPOSE

In entering into this Consent Order, the common objectives of EPA and Respondents are (1) to determine fully the nature and extent of any threat to the public health or welfare or the environment caused by the release or threatened release of any hazardous substances, pollutants or contaminants from the Eastern Diversified Metals Site ("Site") (to be achieved by a "Remedial Investigation"), and (2) to evaluate alternatives for any remedial action to prevent, mitigate or otherwise respond to or remedy the release or threatened release of hazardous substances, pollutants, or contaminants from the Site (to be achieved by a "Feasibility Study"). The activities conducted pursuant to this Consent Order are subject to approval by EPA and shall be consistent with the National Contingency Plan ("NCP"), 40 C.F.R. Part 300.68. In addition to the referenced NCP criteria, the Respondents shall address the cleanup standards required to be taken into account by the President as set forth in Section 121 of the Superfund Amendments and Reauthorization Act of 1986 ("SARA").

III. EPA's FINDINGS OF FACT

EPA makes the following findings of fact:

- A. The Respondents are: AT&T Nassau Metals Corporation ("Nassau") and Theodore Sall, Inc. ("Sall"). The Respondents are both corporations.
- B. Sall is the current owner/operator of the Site. Nassau arranged for the treatment of plastic insulated wire at the Site. Approximately 115 additional companies, not parties to this agreement, have been notified that they are potentially responsible parties because they arranged for the treatment of plastic insulated wire at the Site. The plastic insulated wire may contain hazardous substances.
- C. The Site is located 1000 feet north-west of Lincoln Avenue in Hometown, Schuylkill County, Pennsylvania.
- D. Approximately 157 million pounds of plastic wire insulation ("fluff") were deposited in an open pile at the Site. The pile occupies approximately 8.8 acres of a 25 acre parcel and was used from the late 1960s until 1977 to dispose of plastic wire insulation chips from a copper and aluminum wire recycling operation. The pile, composed primarily of polyvinyl chloride (PVC) and polyethylene chips with some carryover metals and organics, is generally homogenous. According to Sall, the fluff was separated from the copper and aluminum wire using purely mechanical techniques; no solvents or other chemicals were used. The reclaimed wire was not further processed or disposed of at the Site. The approximate dimensions of the fluff pile are 500 by 3000 feet and it varies in height from approximately 30 to 60 feet.
- E. In March 1974, pursuant to a Consent Agreement with the Pennsylvania Department of Environmental Resources (PADEP), a wastewater treatment plant, surface impoundment, diversion ditches, and a groundwater interceptor trench

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were installed to control groundwater migrating to and from the pile and collect and treat the leachate from the pile. According to Sall, the surface impoundment associated with the wastewater treatment plant experienced hydraulic overloads on two separate occasions during storm events, one in 1979 and one in 1984, which flowed into a tributary to the Little Schuylkill River.

F. After the construction of the water treatment plant, sludge from the wastewater treatment process was, on discrete occasions, placed on the waste pile. In September of 1977 the scrap wire recycling operation, as well as the dumping or fluff onto the waste pile, ceased.

G. The disposal of wastewater sludge at this Site ceased in March 1983, when the PADER Bureau of Solid Waste Management issued a notice of violation concerning the disposal of water treatment plant sludge at the Site. Subsequently, the sludge has been disposed of off-site.

H. The Site includes the waste pile described in paragraph D, leachate diversion ditches that are located on the northern and southern boundaries of the waste pile, and a surface water diversion ditch located on the northern boundary of the Site between the leachate diversion ditch and the CONPAIL railroad tracks. To the south, a groundwater interceptor is located between the leachate diversion ditch and the access road. The waste water treatment plant is located on the southwest border of the Site. A holding lagoon is located next to the treatment plant. An intermittent tributary to the Little Schuylkill River is located approximately 10 feet to the south of the treatment plant and drains to the west of the Site. The effluent from the waste water treatment plant is discharged into this tributary. The tributary then flows into the Little Schuylkill River approximately 1000 feet west of the Site. The treatment plant has an NPDES permit to discharge into the tributary to the Little Schuylkill River.

I. On April 12, 1984, EPA conducted an inspection of the Site and collected several surface water, groundwater, soil, and sediment samples. Several heavy metals and organics were reported in samples from the main and secondary leachate seeps, including but not limited to: cadmium, copper, lead, nickel, benzene, chlorobenzene, hexachlorobenzene, ethylbenzene, toluene, xylenes, phenol, 2-ethylphenol, 4-methylphenol, 2,4-dimethylphenol, trans-1,2-dichloroethene, tetrachloroethene, PCB-1260, PCB-1016, bis-phthalate, diethyl phthalate, and di-n-octyl phthalate.

J. A sample taken from an on-site groundwater monitoring well on April 12, 1984, was reported to contain 30 parts per billion of 2,4-dimethylphenol.

K. Upstream, midstream, and downstream samples were taken from an unnamed tributary of the Little Schuylkill River, located approximately 10 feet to the south of the waste pile on April 12, 1984. The downstream sediment concentrations reported for bis (2-ethyl hexyl) phthalates (DEHP), di-n-octyl phthalate, PCB-1260 and PCB-1016 were higher than those measured in the upstream and midstream samples.

L. All of the chemicals named in paragraphs I, J and K above are hazardous substances as defined by CERCLA §101(14).

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M. Approximately 1,500 people within three miles of the Site depend on groundwater for drinking water.

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N. The Site was proposed for inclusion on the National Priorities List (NPL) pursuant to Section 105(8) of CERCLA, 42 U.S.C. §9605(8), on June 10, 1986. On August 3, 1986, Sall submitted comments opposing the appropriateness of including the Site on the NPL.

O. Some studies have linked some or all of the chemicals named in paragraphs I, J, and K above with adverse health effects.

IV. EPA'S CONCLUSIONS OF LAW

A. Eastern Diversified Metals Site is a facility as defined by Section 101(9) of CERCLA, 42 U.S.C. §9601(9).

B. The Respondents are persons as defined by Section 101(21) of CERCLA, 42 U.S.C. §9601(21).

C. Hazardous Substances, as defined in Section 101(14) of CERCLA, 42 U.S.C. §9601(14), have been disposed at the facility and are currently present there.

D. The past, present, and/or potential migration of hazardous substances from the Site constitutes an actual and/or threatened "release" as defined in Section 101(22) of CERCLA, 42 U.S.C. §9601(22).

E. The Respondents are potentially responsible parties under Section 107(a) of CERCLA, 42 U.S.C. §9607(a). Other persons are also potentially responsible parties.

V. EPA'S DETERMINATIONS

Based on the findings of Fact and Conclusions of Law set forth above, EPA has determined that all legal requirements of Sections 104 & 106 of CERCLA, 42 U.S.C. §§ 9604 and 9606 have been met. In particular, EPA has determined that the Respondents are qualified to conduct the RI/FS within the meaning of Section 104(a) of SARA provided the Respondents comply with Section VIII of this Consent Order.

VI. PARTIES BOUND

This Consent Order shall apply to and be binding upon Respondents, and EPA, their agents, successors, and assigns and upon all persons, contractors and consultants acting under or for either the Respondents or EPA or any combination thereof. A change in ownership or corporate or partnership status relating to the Site will in any way alter the status of the Respondents or their responsibility under this Consent Order.

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In the event of any change in ownership or control of any portion of the Site currently owned by Sall, Respondent Sall shall notify the EPA in writing at least 30 days in advance of such change and shall provide a copy of this Order to the transferee in interest of the Site, prior to any agreement for transfer.

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The Respondents shall provide a copy of this Consent Order to all contractors, sub-contractors, laboratories and consultants retained to conduct any portion of the work performed pursuant to this Consent Order.

The parties agree that the Respondents are jointly and severally responsible for carrying out the provisions of this order.

VII. NOTICE TO THE STATE

Notice of issuance of this Order has been given to the Commonwealth of Pennsylvania, pursuant to Section 106(a) of CERCLA, 42 U.S.C. §9606(a).

VIII. WORK TO BE PERFORMED

A. All response work performed pursuant to this Consent Order shall be under the direction and supervision of qualified personnel. Thirty (30) days prior to the initiation of the work set forth below, Respondent shall notify EPA in writing regarding the identity of the personnel to be used in carrying out such work. EPA may disapprove the use of any contractor, subcontractor and/or any supervisory personnel EPA considers for good cause not qualified to perform the work required by this Consent Order or any portion thereof. In the event of a disapproval, Respondents shall notify EPA within thirty (30) days of the identity and the qualifications of the person, contractor or subcontractor that will replace the one that was disapproved. In the event of subsequent disapproval of the replacement, EPA reserves its right under CERCLA and the NCP to conduct a complete RI/FS, or any portion of the RI/FS and to seek reimbursement for the costs thereof.

B. Work shall be performed in accordance with the terms and conditions and schedule of an approved Work Plan ("WP"). A draft WP is to be submitted by Respondents on or before October 8, 1987. The WP shall describe the manner in which the RI/FS shall be performed and shall set forth a schedule for initiation and completion of each element. Such elements shall include, but not be limited to, a Remedial Investigation

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Site Operations Plan, including QA/QC plans and health and safety plans, preliminary draft and final draft Remedial Investigation Reports and preliminary draft and final draft Feasibility Study Reports. The WP shall be prepared in accordance with the NCP and EPA RI/FS guidance documents, including the RI/FS guidance documents dated June, 1985.

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Within sixty (60) days after receipt of the WP by EPA, EPA shall notify Respondent in writing of EPA's approval or disapproval or the WP or any part thereof. In the event of any disapproval, EPA shall specify the deficiencies in writing. Within thirty (30) days of the receipt of any EPA notification of WP disapproval, the Respondents shall amend and submit to EPA a revised WP that responds to and/or remedies the specified deficiencies. In the event of subsequent disapproval of any revised WP: 1) EPA reserves the right to conduct a complete RI/FS, or any portion thereof, and to seek to recover the costs thereof, pursuant to CERCLA and the NCP; and 2) The dispute resolution provisions of Section XIV of this order shall be available to the Respondents. Upon approval by EPA the WP shall be incorporated into this Consent Order and the terms and schedules therein shall become requirements of this Order.

C. A Remedial Investigation Site Operations Plan ("RISOP") shall be submitted to EPA in accordance with the schedule contained in the approved WP. The RISOP will specify, at a minimum, the number, time, location, and manner of soil, air, surface water and groundwater samples to be taken, which shall be sufficient to determine the nature and extent of any threat presented by the release or threatened release of hazardous substances at the Site and to evaluate proposed remedies. Within sixty (60) days after receipt of the RISOP, EPA shall notify the Respondents in writing of EPA's approval or disapproval of the RISOP or any part thereof. In the event of any disapproval, EPA shall specify the deficiencies in writing. Within thirty (30) days of the receipt of EPA notification of RISOP disapproval, the Respondents shall amend and submit to EPA a revised RISOP that responds to and/or remedies the specified deficiencies. Upon approval by EPA the RISOP shall be incorporated into this Consent Order and the terms and schedules shall become requirements of this Consent Order. In the event of subsequent disapproval of any revised RISOP: 1) EPA reserves the right to conduct a complete RI/FS, or any portion thereof, and to seek to recover the costs thereof, pursuant to CERCLA and the NCP; and 2) the dispute resolution provisions of Section XIV of this order shall be available to the Respondents. The Respondents shall implement the WP and RISOP. In the event of a conflict between the approved time schedules in the WP and the RISOP, the RISOP shall prevail.

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D. Beginning 30 days subsequent to the date on which the RISOP is approved by EPA, the Respondents shall provide EPA with a progress report for each preceding 30 day period. At a minimum, these progress reports shall include: 1) a description of the actions that have been taken toward achieving compliance with this Consent Order; 2) all results of sampling, tests, analytical data and interpretations and all other information pertinent to this agreement received by the Respondent; 3) a description of all data anticipated and activities scheduled for the next month; and 4) a description of any problems encountered.

E. Preliminary draft RI and FS reports shall be submitted to EPA in accordance with the schedule contained in the approved WP. Within sixty (60) days of receipt by EPA of such reports, EPA shall notify Respondents in writing of its approval or disapproval of these reports or any part thereof. In the event of any disapproval, EPA shall specify the deficiencies in writing. Within forty-five (45) days of receipt of notification of preliminary draft report disapproval, the Respondents shall amend and submit to EPA a revised preliminary draft report that responds to and/or remedies the specified deficiencies. If after such revision, EPA continues to disapprove, EPA retains the right to amend or supplement the revised preliminary draft report, to perform additional studies, and to complete the RI/FS or any portion thereof pursuant to CERCLA and the MCP and to seek reimbursement for the costs thereof.

F. EPA's approval of any of Respondents' submittals made pursuant to this Consent Order shall constitute a determination by EPA that such actions, if conducted in conformance with that approval, are consistent with the MCP.

G. If EPA fails to meet its deadlines as set forth in this section, Respondents shall be entitled to a modification of the WP and RISOP to provide an extension of time for those tasks affected by EPA's failure equal to the delay caused by EPA's failure.

H. For purposes of this Consent Order, the term "days" shall mean calendar days unless otherwise specified.

IX. DESIGNATED PROJECT COORDINATORS

On or before the effective date of this Consent Order, EPA and the Respondents shall each designate a Project Coordinator. Each Project Coordinator shall be responsible for overseeing the implementation of this Consent Order. To the maximum extent possible, communications between the Respondents and EPA, and all documents, including reports, approvals, and other correspondence, concerning the activities performed pursuant to the terms and conditions of this Consent Order, shall be directed to the Project Coordinators by certified mail.

EPA and the Respondents shall each have the right to change their respective Project Coordinator(s). Such a change shall be accomplished by notifying the other party in writing at least fifteen (15) days prior to the change.

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The EPA-designated Project Coordinator shall have the authority to, inter alia, halt, modify, conduct, or direct any tasks required by this Consent Order and/or undertake any response actions or portions thereof when conditions present a threat to public health or welfare or the environment as set forth in 40 C.F.R. §300.65(b). In the event that work is halted or changed under order of the EPA Project Coordinator pursuant to this paragraph, the approved WP and RISOP shall be reviewed and may be revised by agreement of the Respondents and EPA in accordance with the procedures in Section VIII, Work To Be Performed, above, and, in any case, the schedule for completion of the work set forth in the approved WP and RISOP shall be extended to the extent of such delay. The absence of the EPA Project Coordinator from the area under study pursuant to this Consent Order shall not be cause for the stoppage of work.

X. QUALITY ASSURANCE

The Respondents shall use Quality Assurance/Quality Control practices and procedures, including chain-of-custody procedures, in accordance with guidance provided in "EPA NEIC Policies and Procedures Manual," May 1978, revised November 1984, EPA-330/9-78-001-R and "Interim Guidelines and Specifications for Preparing Quality Assurance Project Plans," December 1980, QAMS-005/80, while conducting all sample collection and analysis activities required by this Consent Order. The Respondents shall consult with EPA in planning for, and prior to, all sampling and analysis required by the approved Work Plan. In order to provide adequate Quality Assurance and Quality Control regarding all samples collected and analyzed pursuant to this Consent Order, the Respondents shall:

1. Use a laboratory(s) which has a documented Quality Assurance Program that complies with EPA guidance document QAMS-005/80.
2. Ensure that EPA personnel and/or EPA authorized representatives are allowed reasonable access to the laboratory(s), records and personnel utilized by the Respondents for analysis of samples collected pursuant to this Consent Order.
3. Prepare a Quality Assurance Project Plan ("QAPjP") for the sample collection and analysis to be conducted pursuant to this Consent Order. The QAPjP is to be submitted to the EPA Project Coordinator for review and approval prior to initiating any field investigations after the date of this order. The QAPjP (and Sampling Plans if prepared as separate documents) must be submitted to EPA as part of the site Work Plan required in Section VIII of this Consent Order. The purpose of the plan is to present, in detail, the data quality objectives, sample collection procedures, and data analysis processes and the procedures to ensure that the objectives are met. QAMS-005/80 shall be used as guidance in the preparation of the QAPjP; additional guidance may be provided by EPA as requested.

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4. Agree that laboratory(s) analyzing samples required by this Consent Order shall use the methods and submit deliverables delineated in the current "Statement of Work of the EPA Contract Lab Program." Current copies are available from the Environmental Services Division ("ESD") QA Section, Annapolis, Maryland at (301) 224-2740. If any parameter to be analyzed for is not one of the parameters for which Contract Lab Program CLP methods are available, the lab shall use methods which are EPA-approved (and which are to be described in the QAPjP).
5. Agree that a laboratory(s) analyzing samples pursuant to this Consent Order must demonstrate its capability to perform analyses in compliance with CLP requirements through the analysis of Performance Evaluation ("PE") samples prior to conducting any analysis. Analysis of PE samples may be waived if the laboratory has analyzed PE samples submitted by EPA or a state agency within the past six (6) months. Documentation of such PE sample analysis must be submitted to the EPA Project Coordinator for verification.
6. Conduct an audit of the laboratory(s) that will analyze samples from the site at some point during the time the laboratory(s) is conducting analyses (to be specified in the QAPjP). The audit will be conducted to verify analytical capability. Auditors should conduct lab audits according to procedures available from the ESD QA Section. Audit reports must be submitted to the EPA site Project Coordinator within fifteen (15) calendar days of completion of the audit. The Respondents must report serious deficiencies and corrective actions to be immediately taken within 5 business days of the time the Respondents knew or should have known of the deficiency. Laboratories which are Superfund Contract Labs ("CLP Labs") need not be audited.
7. Conduct at least one appropriate field audit (to be described in the QAPjP) during initial sampling activities to verify that field samplers are correctly following sampling procedures described in the quality assurance and/or sampling plans. A report of the field audit must be sent to the EPA Project Coordinator within fifteen (15) calendar days of completion of the audit. Respondents must report serious deficiencies and corrective actions to be immediately taken within 5 business days of the time the Respondents knew or should have known of the deficiency.

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8. Provide data validation of analyses done by the laboratory(s) (to be described in the QAPjP). This data validation shall determine data usability and shall be performed in accordance with the Functional Guidelines for Data Review (available from ESD QA Section) for data derived by CLP methods, or with the QA/QC criteria set forth in the method, if other than a CLP method. For methods lacking QA/QC data validation protocols the Respondents must establish validation criteria such as those in Section 8 of the EPA Series Methods in 40 C.F.R. § 136. The appropriate quality assurance data validation summary reports should be submitted, along with sample data and summary sheets, to the EPA Project Officer at the time final sample results are provided to EPA.

In the event that the Respondents fail to use the QA/QC practices and procedures as outlined herein, EPA reserves the right to conduct a complete RI/FS or any portion thereof pursuant to its authority under CERCLA, to seek reimbursement from any Responsible Parties in a proceeding independent of this Consent Order and/or to seek any other appropriate relief.

XI. SITE ACCESS

To the extent that property included in the area under study is presently owned or controlled by parties other than Respondents to this Consent Order, the Respondents will use all reasonable efforts to obtain Site access agreements from the present owners within sixty (60) days of approval of the RISOP. Such agreements shall provide reasonable access for EPA, the Respondents and their authorized representatives. In the event that the property owner refuses to provide such access or access agreements are not obtained within the time designated above, whichever occurs sooner, the Respondents shall so notify EPA. The Respondents shall also notify EPA of all efforts to obtain such agreements. EPA shall then take steps to provide such access. If EPA is unable to provide such access, the approved WP and/or RISOP shall be modified by Respondents, with EPA's approval, to take account of such lack of access, in accordance with the procedures in Section VIII, Work To Be Performed, above. Respondents shall not be required to pay any property owner an unreasonable fee for site access under this order.

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EPA and/or its authorized representatives shall, upon reasonable prior notice, have the authority to enter and freely move about all property owned or controlled by either Respondent at the Site subject to this Consent Order at all reasonable times for the purpose of, inter alia: inspecting non-privileged records, operating logs, and contracts related to the Site; reviewing the progress of the Respondents in carrying out the terms of this Consent Order; conducting such tests as EPA deems necessary; using a camera, sound recording or other documentary type equipment; and verifying the data submitted to EPA by the Respondents. The Respondents shall permit such persons to inspect and copy all non-privileged records, files, photographs, documents, and other writing, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Consent Order. As used in this paragraph, a document is privileged only if it would be exempt from discovery in litigation between the Respondent and EPA. If EPA requests access to any materials which the Respondent believes are privileged, the respondent shall within 10 days provide EPA with a list of the documents alleged to be privileged, a description of the contents of said documents, and the nature of the privilege claim. The term "reasonable times" shall include, but not be limited to, the hours of 8 a.m. to 5 p.m., Monday through Friday and the hours during which work pursuant to this Consent Order is being performed at the Site. Nothing herein shall be interpreted as limiting the inspection or response authority of EPA under federal law. All parties with access to the Site pursuant to this paragraph shall comply with all approved and applicable health and safety plans.

XII. SAMPLING AND DATA/DOCUMENT AVAILABILITY

The Respondents shall make available to EPA the results of all sampling and/or tests or other data generated by the Respondent, or on the Respondents behalf, with respect to the implementation of this Consent Order, and shall submit these results in monthly progress reports as described in the approved WP. EPA shall make available to the Respondents the results of sampling and/or tests or other data similarly generated by EPA.

At the request of any party, any other party shall allow split or duplicate samples to be taken by the requesting party and/or its authorized representatives, of any samples collected by the Respondents or EPA pursuant to the approved WP and/or RISOP. The Respondents shall notify EPA not less than five days in advance of any such sample collection activity.

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The Respondents may assert a claim of business confidentiality covering part or all of the information or documentation requested by or provided under this Consent Order in the manner described in 40 C.F.R. §2.203(b). Such an assertion shall be adequately substantiated in accordance with 40 C.F.R. §2.204 at the time the assertion is made. Analytical data shall not be claimed as confidential by the Respondents.

Information subject to such a claim will be handled in accordance with the procedures set forth in 40 C.F.R. Part 2, Subpart B. If no such claim of business confidentiality accompanies the information or documentation when it is submitted or made available to EPA, it may be made available to the public by EPA without further notice to the Respondents.

XIII. RECORD PRESERVATION

EPA and the Respondents agree to preserve, during the pendency of this Consent Order and for a minimum of six (6) years after its termination, all records and documents in its possession that relate in any way to the Site, despite any document retention policy to the contrary. Respondents will use their best efforts to obtain copies of all documents that relate in any way to the Site and are in the possession of its employees, agents, accountants, contractors, or attorneys. After this six-year period, the Respondents shall notify EPA at least thirty (30) calendar days prior to the destruction of any documents that relate to this Consent Order. Upon request by EPA, the Respondents shall make available to EPA such records or copies of any such records and shall not destroy such records while the EPA request is pending. Disclosure of such documents to EPA is subject to applicable privileges.

XIV. DISPUTE RESOLUTION

If the Respondents object to any EPA notification of deficiency or disapproval or other EPA action taken pursuant to this Consent Order, the Respondents shall notify the Chief, EPA Region III Hazardous Waste Enforcement Branch, in writing of their objection(s) within fourteen (14) calendar days of receipt of such notification or action. EPA and the Respondents shall have an additional fourteen (14) days from the receipt by EPA of the notification of objection to reach agreement. If agreement cannot be reached on any issue within this fourteen (14) day period, the Respondents shall have the right to review by the Division Director, EPA Region III Hazardous Waste Management Division. The time for resubmittal of a disapproved document shall be extended for a period equal to the time taken for review through the Division Director, unless EPA determines that the dispute is frivolous. This review shall not operate as a substitute for any other form of review. EPA and the Respondents reserve all legal remedies and defenses otherwise available under federal law.

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XV. DELAY IN PERFORMANCE AND NON-PERFORMANCE PENALTIES

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For each week that the Respondents fail to submit a report or document or otherwise fail to comply with the requirements of this Consent Order at the time and in the manner set forth herein, or in the approved WP or RISOP, the Respondents shall be liable upon demand to EPA for the sums set forth below as non-performance penalties. Checks shall be made payable to the Hazardous Substance Superfund. Checks shall be addressed to:

U.S. Environmental Protection Agency
Superfund Accounting
P.O. Box 371003M
Pittsburgh, PA 15251

A copy of the check shall be sent to the EPA Project Coordinator.

Non-performance penalties shall accrue in the amount of \$500 for the first week, or any portion thereof, and \$1000 for each week thereafter, or any portion thereof, for failing to comply with any of the following requirements:

- 1) Submit draft and final Work Plans to EPA in accordance with the schedule and requirements set forth in Section VIII herein.
- 2) Submit draft and final RISOPs to EPA in accordance with the schedule and requirements set forth in the Work Plan and Section VIII herein.
- 3) Submit preliminary draft and revised preliminary draft RI Reports to EPA in accordance with the schedule and requirements set forth in the Work Plan and Section VIII herein.
- 4) Submit preliminary draft and revised preliminary draft FSS to EPA in accordance with the schedule and requirements set forth in the Work Plan and Section VIII herein.

Non-performance penalties shall accrue in the amount of \$100 for the first week, or any portion thereof, and \$250 for each week thereafter, or any portion thereof, for failing to comply with any other requirement of the Work Plan, RISOP, or this Consent Order. Non-performance penalties pursuant to this paragraph shall not continue to accrue past the 5th week of each such violation unless EPA has provided written demand to the Respondent of such failure. If such demand is provided after the 5th week, non-performance penalties shall continue to accrue after the making of such demand if the non-complying event continues beyond the date of the demand.

Any non-performance penalty assessed by EPA and actually paid by the Respondents may be used to offset an equal amount of statutory penalties owed by Respondents for the same event or failure.

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EPA shall have the authority, at its sole discretion, to reduce or forgive the penalties provided by this section.

XVI. FORCE MAJEURE

The Respondents shall notify EPA of any delay or anticipated delay in achieving compliance with any requirement of this Consent Order, caused by circumstances beyond the reasonable control of the Respondents. Such notification shall be made verbally as soon as possible but no later than four (4) business days after any such delay or anticipated delay and in writing no later than seven (7) days after becoming aware of such delay or anticipated delay. The written notification shall describe fully the nature of the delay, the reasons the delay is beyond the control of Respondents, the actions that will be taken to mitigate, prevent and/or minimize further delay, the anticipated length of the delay, and the timetable according to which the actions to mitigate, prevent and/or minimize the delay will be taken. The Respondents shall adopt all reasonable measures to avoid or minimize any such delay.

Any such delay that results from circumstances beyond the reasonable control of the Respondents, and that cannot be overcome by due diligence on the Respondents' part, shall not be deemed to be a violation of its obligation(s) under this Consent Order, and shall not make the Respondents liable for the non-performance penalties contained in Section XV, "Delay in Performance and Non-Performance Penalties", above. To the extent a delay is caused by circumstances beyond the reasonable control of the Respondents, the schedule affected by the delay shall be extended for a period equal to the delay resulting from such circumstances. Increased costs of performance or the terms of this Consent Order or changed economic circumstances shall not be considered circumstances beyond the reasonable control of the Respondents.

Failure of the Respondents to comply with the notice requirements of this paragraph shall constitute a waiver of the Respondents' right to invoke the benefits of this paragraph with respect to that event.

In the event that EPA and the Respondents cannot agree that any delay in compliance with the requirements of this Consent Order has been or will be caused by circumstances beyond the reasonable control of the Respondents the dispute shall be resolved in accordance with the provisions of the "Dispute Resolution" section, Paragraph XIV, of this Consent Order. The Respondents shall have the burden of proving that the delay was caused by circumstances beyond their reasonable control and that the Respondents took all reasonable measures to avoid or minimize delay.

XVII. RESERVATION OF RIGHTS

Except as expressly provided in this Consent Order, (1) each party reserves all rights and defenses it may have, and (2) nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, including the right to seek injunctive relief, imposition of statutory fines, and/or punitive damages.

As provided by this Consent Order, EPA expressly reserves its right to disapprove or work performed by the Respondents and reserves its right to request that the Respondents perform response actions in addition to those required by or as modified in the approved W.P. and PISOP, if it determines that such actions are necessary. In the event that the Respondents

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decline to perform such additional and/or modified actions, EPA reserves the right to undertake such actions. After the completion of an RI/FS for the Site, EPA reserves whatever rights it has to require private parties to carry out remedial activities at the Site. In addition, EPA reserves the right to undertake removal and/or remedial actions at any time that such actions are appropriate under the NCP and seek reimbursement for any costs incurred. ORIGINAL

So long as the Respondents are proceeding in accordance with the terms of this Consent Order, EPA, subject to the reservation of rights made in this section, agrees not to institute any judicial or administrative proceeding against the Respondents to respond to or remedy the conditions existing at and around the Site as of the effective date of this Consent Order that are to be addressed in the RI/FS.

Except as otherwise provided herein, Respondents expressly preserve any rights they may have to oppose claims made by EPA, and reserve any claims they may have against EPA or third parties related to the matters covered by this Consent Order. For the purposes of this Consent Order only, the parties expressly agree that § 106(b)(2) of CERCLA is not available to seek reimbursement of costs incurred pursuant to this Order.

XVIII. REIMBURSEMENT OF COSTS

At the end of each year, EPA shall submit to the Respondents an accounting of all response and oversight costs incurred by the U.S. Government with respect to this Consent Order. Such costs shall include the cost of personnel, overhead and analysis of any samples split with Respondents. The accounting shall be accompanied or preceded by specific documentation of the work performed including, when requested, all QA/QC data and reports. The Respondents shall, within 30 calendar days of receipt of that accounting, and proper documentation, remit a check for the amount of those costs made payable to the Hazardous Substance Superfund. Checks should specifically reference the Site and be addressed to:

U.S. Environmental Protection Agency
Superfund Accounting
P.O. Box 371003M
Pittsburgh, PA 15251

A copy of the transmittal letter should be sent to the EPA Project Coordinator.

The Respondents can object to any portion of the costs as being inconsistent with the NCP and any such portion shall be subject to the Dispute Resolution Procedures set forth in Section XIV.

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EPA reserves the right to bring an action against the Respondents pursuant to Section 107 of CERCLA, 42 U.S.C. Section 9607, for recovery of all response and oversight costs incurred by the United States related to this Consent Order and not reimbursed by the Respondents, as well as any other costs incurred by the United States in connection with response actions conducted pursuant to CERCLA at the Site.

EPA recognizes that the amounts contributed by each participating Respondent bear no direct relationship to the amount or degree of hazard, if any, contributed by each Respondent to the Site.

XIX. OTHER CLAIMS

Nothing in this Consent Order shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership, or corporation not bound by this Consent Order for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Site.

This Consent Order does not constitute any decision on preauthorization of funds under Section 111(a)(2) of CERCLA, 40 U.S.C. Section 9611(a)(2).

XX. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to this Consent Order shall be undertaken in accordance with the requirements of all applicable local, state, and federal laws and regulations.

XXI. PUBLIC COMMENT

Upon approval by EPA of the Feasibility Study Draft Report, EPA shall make such report available to the public for review and comment for, at a minimum, a twenty-one (21) day period, pursuant to 40 C.F.R. Section 300.67(d) (50 Fed. Reg. 47978, November 20, 1985). Following the public review and comment period, EPA shall notify the Respondents which remedial action alternative is approved for the Site. However, this Order does not require the performance of any remedial action by Respondents.

XXII. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

The effective date of this Consent Order shall be the date on which it is signed by EPA. _____

This Consent Order may be amended by mutual agreement of EPA and the Respondents. Such amendments shall be in writing and shall have as their effective date, the date on which such amendments are signed by EPA. Minor modifications to the requirements of the WP or RISOP may be made by mutual agreement of the Project Coordinators. Such modifications shall be made by exchange of letters by the Project Coordinators and shall have as an effective date, the date on which the letter of the Project Coordinator is signed.

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Any reports, plans, specifications, schedules, or other submissions required by this Consent Order are, upon approval by EPA, incorporated into this Consent Order and may be amended, modified, or revised by mutual agreement of the parties by exchange of letter by authorized representatives for the parties without formal amendment of this Consent Order. Any non-compliance with such EPA approved reports, plans, specifications, schedules, or other submissions shall be considered non-compliance with the requirements of this Consent Order and will subject the Respondents to the requirements of Section XV, "Delay in Performance and Non-Performance Penalties", above.

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No advice, guidance, suggestions or comments by EPA, other than a formal approval, regarding reports, plans, specifications, schedules, or other submissions by the Respondents or the requirements of this Consent Order will be construed as relieving the Respondents of its obligation to obtain formal approval when required by this Consent Order.

XXIII. NO ADMISSIONS

Nothing in this Consent Order is intended or shall be construed to be an admission as to the fact or law by the Respondents for any purpose. The participation of Respondents in this Consent Order shall not be admissible against any party to this agreement in any judicial or administrative proceeding, except to enforce the terms of this Consent Order.

XXIV. TERMINATION AND SATISFACTION

The Respondents' obligations to EPA under this Consent Order shall terminate and be deemed satisfied upon Respondents' receipt of written notice from EPA that the Respondents have demonstrated, to the satisfaction of EPA, that all the terms of this Consent Order have been completed. Upon termination of this Consent Order pursuant to the provisions of this Section, EPA covenants not to sue Respondents for the RI/FS performed by Respondents in accordance with the terms of this Consent Order. This covenant not to sue shall not be construed to limit EPA's right to sue or take any administrative action against a potentially responsible party (PRP) not a signatory to this agreement. Nothing herein shall be deemed to grant any rights to persons not parties to this Consent Order, and EPA and Respondents reserve all rights against such parties.

For Theodore Sall, Inc.:

Harold B. Shapiro
Signature

9-29-87
Date

HAROLD B. SHAPIRO
Name (print)

VICC DACS.
Title

AR300957

For AT&T Nassau Metals Corporation:

Robert E. Cornelia

Signature

10-2-87

Date

ROBERT E. CORNELIA

Name (print)

PRESIDENT

Title

For EPA, Region III,

Stanley Laskowski

Stanley Laskowski

Deputy Regional Administrator,
Region III

U.S. Environmental Protection Agency

2-15/87

Date

I hereby certify that the
within is a true and correct copy
of the original AR 300958
filed in this matter.

Attorney for

AR300958